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corporation cannot as a rule purchase its own stock, though in certain exceptional cases it may be allowed to do so.¹⁵

Admirable as the effort of the courts to conform the results of statutes to that intended by the legislature may be, it is regrettable that it has resulted in such a confusion of the terms, "capital," "capital stock," "property" and "shares of stock," as exists in the cases. Each expression has a separate and distinct meaning, and refers to entirely different things. The legislature is the real offender, since in drafting the statutes it uses the terms in such a manner as to force the courts to depart from the ordinary meaning of the words in order to carry out the obvious intent of the law.

P. M.

COURTS MARTIAL: HABEAS CORPUS.—In *United States ex rel. Doughty v. Hunt*¹ a writ of *habeas corpus* issued on behalf of the relator, who was then held imprisoned under sentence of a general court-martial. For the relator it was contended that the evidence had shown him to have been in a "daze" or "stupor" at the time he committed the offense for which the court-martial had tried and convicted him; that this fact was sufficient to raise the issue of mental derangement; and the presence of this issue was sufficient, under the provisions of the Manual for Courts-Martial,² to deprive the court of its right further to proceed with the case.

Upon return of the writ it was held by the District Court that the evidence in question did not *ipso facto* raise the issue of mental derangement; and that consequently the release of the relator could not be ordered, for, in the language of the opinion, "a civil court has no power to interfere with the conduct of a court-martial except in a case where that court has exceeded its jurisdiction." And when jurisdiction is established in the beginning, it is not lost "by any mistake in the general conduct of the case," but only upon a showing "that there is some point in the proceedings where the court actually lost entire jurisdiction over the case."

To this enunciation of the rule no novelty attaches, for it has long been an established principle of law that *habeas corpus* can liberate one held to answer by a court-martial only when the jurisdiction of that court-martial can be impugned.³ Courts-

¹⁵ *Stewart v. Stewart Hotel Co.* (1917) 33 Cal. App. 167, 164 Pac. 624.

¹ (December 9, 1918) 254 Fed. 365.

² § 219. "Where the existence of mental disease or derangement on the part of the accused, either at the time of trial or at the time of the commission of the alleged wrongful act, becomes an issue in the trial of the case, the court will stop its proceedings and immediately report the fact to the convening authority."

³ *Dynes v. Hoover* (1858) 61 U. S. 65, 15 L. Ed. 838; *Smith v. Whitney* (1886) 116 U. S. 167, 29 L. Ed. 601, 6 Sup. Ct. Rep. 570; *Carter v. McClaughry* (1901) 183 U. S. 365, 46 L. Ed. 236, 22 Sup. Ct. Rep. 181; *Mullan v. United States*, (1909) 212 U. S. 516, 53 L. Ed. 632, 29 Sup. Ct. Rep.

martial form no part of the judiciary of the nation; they are agencies created by Congress in pursuance of its power to make rules for the governance of the land and naval forces⁴ to aid the President in the enforcement of order and discipline within the army;⁵ and as they pertain to the executive branch of government their proceedings may not be subjected to judicial review.⁶ Such proceedings can only be considered collaterally, and collateral consideration extends only to the inquiry whether or not the court-martial did have jurisdiction over the case.⁷ The first important question in connection with jurisdiction is, what must be shown to establish jurisdiction in the first instance? Then follows the inquiry as to when a court may be subsequently divested of jurisdiction which it once had.

In the Manual for Courts-Martial⁸ the jurisdiction of any particular court-martial is stated to be conditioned upon four indispensable attributes, namely: (1) that it was convened by an officer empowered by statute to appoint it, (2) that the members who sat thereupon were legally competent to do so, (3) that the court possessed statutory authority to try the person arraigned for the offense charged, and (4) that its sentence was in accordance with law. So much is clear. Upon return to a writ of *habeas corpus* issued on behalf of one detained by military authority⁹ it is incumbent upon the author of such detention to show affirmatively that the relator is subject to military jurisdiction and held for an offense of which military courts may take cognizance. If the relator is held awaiting trial it must also be shown that the court was properly constituted and appointed, and if he is held under sentence of a court-martial it is requisite in addition to show the legality of the sentence. Absence of such showing under the conditions enumerated is beyond all question

330; *Kirkman v. McClaughry* (1908) 160 Fed. 436; *Dillingham v. Booker* (1908) 163 Fed. 696; *Ex parte Rock* (1909) 171 Fed. 240; and cases therein cited.

⁴ U. S. Const., Art. 1, § 8, Clause 14.

⁵ Winthrop, *Military Law and Precedents* (2nd ed.) p. 53; Davis, *Military Law of the United States* (3rd ed.) p. 43, n.

⁶ The same rule applies also to administrative agencies other than courts-martial exercising judicial or quasi-judicial functions. So held with regard to boards operating under the Selective Draft Law, *Angelus v. Sullivan* (1917) 246 Fed. 54; *Brown v. Spelman* (1918) 254 Fed. 215; to examining boards, *Meffert v. State Board of Medical Examination* (1903) 66 Kan. 710, 72 Pac. 247. So held likewise with regard to decision of administrative officials in the Chinese exclusion cases, *United States v. Ju Toy* (1905) 198 U. S. 163, 49 L. Ed. 1040, 25 Sup. Ct. Rep. 644. But compare in this latter connection *United States v. Charlie Dart* (1918) 251 Fed. 394.

⁷ See cases cited, *supra*, n. 3.

⁸ § 34.

⁹ Slightly different considerations from those hereinafter set forth might have application in the existence of a state of martial law. Questions so arising are, however, foreign to the purposes of this note.

fatal, and release of the person detained will forthwith be ordered.¹⁰

It is believed, however, that no further showing is necessary. Although the language of the courts as applied to this question is tinged with a faint suggestion of caution,¹¹ it is submitted that, in the present state of the authorities, the establishment of the four conditions enumerated in the Manual for Courts-Martial is, in and of itself, sufficient to establish the legality of the restraint complained of. It makes no difference that the relator can show the court-martial to have made a "mistake in the general conduct of the case,"¹² or that it was guilty of "error or irregularity,"¹³ or that it had acted with "undue severity,"¹⁴ or even that it had pronounced "mistaken rulings in respect to evidence or law."¹⁵

It is true that there are expressions in certain decisions which suggest that gross irregularity or flagrant departure from established rules of practice might possibly affect the jurisdiction of the court-martial. So it is said in *Dynes v. Hoover* that persons "belonging to the Army or Navy are not subject to illegal or irresponsible courts-martial, when the law for convening them and directing their proceedings of organization and for trial have been disregarded."¹⁶ And in *Mullan v. United States*¹⁷ there is an intimation that such irregularity as would work deprivation of the substantial rights of an accused might operate in divestment of jurisdiction. These and kindred expressions are, however, invariably followed by qualifying language, and are authority of very doubtful value, especially in view of the fact that they have never been followed to the point of actually determining a case.

This doubt is further enhanced by consideration of the provisions of the thirty-seventh Article of War, under which the authority reviewing the sentence of a court-martial may find its actions invalid if, "upon examination of the entire proceedings," there be disclosed error or irregularity which "has injuriously

¹⁰ *McClaghry v. Deming* (1902) 186 U. S. 49, 46 L. Ed. 1049, 22 Sup. Ct. Rep. 786; *Carter v. McClaghry* (1901) 183 U. S. 365, 394, 46 L. Ed. 236, 22 Sup. Ct. Rep. 181; also cases cited, *infra* n. 11.

¹¹ Cf. language of *Johnson v. Sayre* (1895) 158 U. S. 109, 118, 39 L. Ed. 914, 917, 15 Sup. Ct. Rep. 773, 777: "The court-martial having jurisdiction of the person accused, and of the offense charged, and having acted within the scope of its lawful powers, its decision and sentence cannot be reviewed or set aside by the civil courts by writ of habeas corpus." Passages of identical purport will be found also in *Swaim v. United States* (1897) 165 U. S. 553, 555, 41 L. Ed. 823, 824, 17 Sup. Ct. Rep. 448, 449; *United States v. Praeger* (1907) 149 Fed. 474, 485; *Mullan v. United States* (1908) 212 U. S. 516, 520, 53 L. Ed. 632, 635, 29 Sup. Ct. Rep. 330, 331. Cf. also cases cited, *supra*, n. 3, 10.

¹² *United States v. Hunt* (1918) 254 Fed. 365.

¹³ *Ex parte Reed* (1879) 100 U. S. 13, 23, 25 L. Ed. 538, 539.

¹⁴ *Swaim v. United States*, *supra*, n. 11.

¹⁵ *Dynes v. Hoover*, *supra*, n. 3.

¹⁶ *Id.*

¹⁷ *Supra*, n. 11. The court says: "We think there was nothing in the manner in which the court-martial was organized which deprived the accused of a substantial right in such manner as to oust its jurisdiction in the premises."

affected the substantial rights of an accused." It would seem that a civil court in *habeas corpus* proceedings might collaterally attack the jurisdiction of a court-martial upon showing of irregularity in injury of "substantial rights." The case now under discussion is the only one since 1916—at which time Article of War 37 became in its present form a part of the military code—in which *habeas corpus* has been directed at court-martial proceedings, and in that case no such contention was even advanced.

All these considerations point to the truth of the view previously advanced, namely, that jurisdiction is finally shown by the establishment of the four conditions set forth in the Manual for Courts-Martial, and that irregularity in practice or error in law cannot raise the question again.

It is evident in any event that the civil courts are unable to afford any sort of adequate protection against arbitrary, irregular, or unduly harsh action of courts-martial. Military law likewise fails to afford such protection, for while setting forth many directions and even positive rules designed to serve that end, it provides the most ineffective means of compelling compliance therewith.¹⁸ Some protection the soldier should have, and legislation as a means of securing it to him at least merits the consideration of thinking persons.¹⁹

E. M. P.

DURESS: FINANCIAL NECESSITY AS AN ELEMENT.—The question of duress as a defense to a contract, where there was involved neither the restraint of the person nor of the goods of the defendants, was presented recently to the District Court of Appeal, in the case of *Tisdale v. Bryant*.¹ The action was for the partition of a tract of land, an undivided one-half interest in which plaintiff claimed under an agreement made while defendants were experiencing financial difficulties. Defendants asserted that plaintiff took advantage of their financial embarrassments to force them into the agreement, and they sought to avoid the agreement on the ground that, because of their financial necessities, it was made under duress. The court held that the facts alleged were not sufficient to constitute duress.

Duress of the person, the only sort mentioned by Blackstone,² took the form of imprisonment or violence or threats of imprison-

¹⁸ In this connection cf. the testimony given on February 13, 1919, before the Senate Committee on Military Affairs by Brigadier-General Samuel T. Ansell, Acting Judge Advocate General of the Army. A resume of this testimony is given in the Army and Navy Journal for February 15, 1919, at page 853.

¹⁹ Reforms directed to this end are suggested in the bill introduced by Senator Chamberlain on January 13, 1919, into the Senate Committee on Military Affairs, and in the joint resolution proposed by Senator McKellar on February 18, 1919.

¹ (Nov. 23, 1918) 27 Cal. App. Dec. 692.

² 1 Bl. Com., § 178, 1 Jones' Edition, 224.